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No. 454

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

SALVATORE TERRITO, CHARLES TERRITO, and VINCENT TERRITO
A Partnership, Trading as Territo & Sons
and
CALTEX PETROLEUM CO., INC., A Corporation,
Appellants,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellees.

APPEAL FROM FINAL ORDER OF THREE JUDGE STATUTORY COURT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW.

This appeal is from the opinion and final order of the three-judge statutory court of the United States District Court for the District of New Jersey in the above-entitled case which opinion and order were rendered and filed on June 6, 1958. A copy of said opinion and order is attached hereto as Appendix "A".

JURISDICTION

This appeal is taken pursuant to the provisions of 28 U.S.C. §1253. The opinion and order of the three-judge statutory court of the United States District Court for the District of New Jersey, entered on June 6, 1958, dismissed the complaint of the appellants herein for an order to enjoin the United States and the Interstate Commerce Commission from proceeding any further with investigations in Dockets No. MC-C-2039 and MC-C-2040, and to annul and set aside in their entirety the orders of the Interstate Commerce Commission dated October 3, 1956, February 11, 1957 and October 25, 1957, in the matter of Territo & Sons, a partnership — Investigation of Operations, Docket No. MC-C-2039, and in the matter of Calter Petroleum Co., Inc. — Investigation of Operations, Docket No. MC-C-2040, for want of jurisdiction.

In this proceeding, appellants are requesting the Court to determine, as a matter of law, that the Interstate Commerce Commission is without jurisdiction to institute investigations of private carriers under Section 204(c) of the Interstate Commerce Act or under any other section of the Act unless said investigation is directed solely to an issue pertaining to qualifications and maximum hours of service of employees, and standards of equipment of a private carrier.

The judgment sought to be reviewed was dated and entered on June 6, 1958. The notice of appeal to the Supreme Court of the United States was filed with the United States District Court for the District of New Jersey on August 6, 1958. The date for filing this jurisdictional statement was extended to October 16, 1958, by order of the United States District Court for the District of New Jersey, which order has previously been filed with this Court.

Title 28 U.S.C. §1253 is the statutory provision believed to confer on this Court jurisdiction of the appeal. Said section provides as follows:

"Except as otherwise provided by law, any party

> may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

Title 28 U.S.C. §2325 is the Act of Congress which required the proceeding in the United States District Court for the District of New Jersey, supra, to be heard and determined by a District Court of three judges. 28 U.S.C. §2325 provides that:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

Among the cases believed to sustain the jurisdiction of the Supreme Court of the United States on this appeal include, among others, the following:

> *Radio Corp. of America* v. *United States*, 95 F. Supp. 660, Affirmed 71 S. Ct. 806, 341 U. S. 412, 95 L. Ed. 1062.
>
> *U. S.* v. *Hancock Truck Lines, Inc.*, 65 S. Ct. 1003, 324 U. S. 774, 89 L. Ed. 1357.

QUESTIONS PRESENTED BY THE APPEAL

The questions presented by this appeal are as follows:

1. Whether the Interstate Commerce Commission has authority under Section 204(c) or under any other section of the Interstate Commerce Act to institute investigations of private carriers with a view to determining whether they have been and are engaging in the transportation of property in interstate or foreign commerce for compensation as a common

or contract carrier by motor vehicle in violation of Section 206(a)(1) or 209(a)(1) of said Act.

2. Whether the three-judge statutory court erred in dismissing, for want of jurisdiction, the complaint for an order to enjoin the United States and the Interstate Commerce Commission from proceeding any further with the investigations in Dockets No. MC-C-2039 and MC-C-2040, and to annul and set aside in their entirety the orders of the Interstate Commerce Commission dated October 3, 1956, February 11, 1957 and October 25, 1957, in the matter of Territo & Sons, a partnership — Investigation of Operations, Docket No. MC-C-2039, and in the matter of Calter Petroleum Co., Inc. — Investigation of Operations, Docket No. MC-C-2040, for want of jurisdiction.

CONCISE STATEMENT OF THE CASE

On and prior to December 3, 1956, and continuously since that date, the appellants have been engaged in the fuel oil business by providing heating fuel and related services for their customers. In delivering their products to their customers, appellants operate as private carriers of property by motor vehicle as defined in Section 203(a)(17) of the Interstate Commerce Act. As such private carriers, the Interstate Commerce Commission has jurisdiction over the appellants only with respect to matters relating to qualifications and maximum hours of service of employees, and standards of equipment. This restrictive jurisdiction over private carriers appears in Section 204(a)(3) of the Interstate Commerce Act which provides that:

> "To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term

> 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204(c); 205; 220; 221, 222(a), (b), (f), and (g); and 224."

Under date of October 3, 1956, the appellants were named respondents in two investigations proceedings instituted by the Interstate Commerce Commission under Section 204(c) of the Interstate Commerce Act with a view to determining whether they (appellants) have been engaging in the transportation of property in interstate or foreign commerce for compensation as a common or contract carrier by motor vehicle, in violation of Section 206(a(1) or 209(a)(1) of the Interstate Commerce Act.

Under Section 204(c) of the Interstate Commerce Act, the Interstate Commerce Commission does not have authority to institute investigations of private carriers with respect to any matters other than those pertaining to qualifications and maximum hours of service of employees, and standards of equipment. As heretofore indicated, Section 204(a)(3) of the Interstate Commerce Act specifically limits the jurisdiction of the Interstate Commerce Commission under Section 204(c) to instituting investigations of private carriers only insofar as qualifications and maximum hours of service of employees, and standards of equipment are concerned. In dismissing the complaint for an injunction against the Interstate Commerce Commission, the three-judge court erroneously concluded that:

> "We have here an attempt to raise in a statutory three judge court in advance of administrative action a question of administrative jurisdiction which such a court is competent to consider only if and after decision shall have gone against the aggrieved parties on the merits in the administrative tribunal. We emphasize that jurisdictional questions like all other can be preserved for review at that time. But the matter is clearly not ripe for judicial intervention now." (App. A — p. 11).